

April 9, 2019

Via hand-delivery

Timothy J. Noonan, Esq.
Executive Director
State of Vermont
Labor Relations Board
133 State Street
Montpelier, VT 05633-6101

RE: VSBA et al. v. Vermont-NEA et al.
VLRB Case No.: 19 – 16

Dear Tim:

Please find enclosed for filing in the above-referenced matter the original and four copies of Respondents' *Answer* and accompanying exhibits to the Unfair Labor Practice.

Sincerely,



Wanda Otero-Weaver
General Counsel

Enclosures

c: Joseph Farnham, Esq. (w/ encls.)

**STATE OF VERMONT
LABOR RELATIONS BOARD**

VERMONT SCHOOL BOARD)
ASSOCIATION and REPRESENTATIVES)
OF SCHOOL BOARDS ON THE)
COMMISSION ON PUBLIC SCHOOL)
EMPLOYEE HEALTH BENEFITS,)
Complainants,)
v.)
VERMONT-NEA, AMERICAN FEDERATION)
OF STATE, COUNTY, AND MUNICIPAL)
EMPLOYEES, and REPRESENTATIVES OF)
SCHOOL EMPLOYEES ON THE)
COMMISSION ON PUBLIC SCHOOL)
EMPLOYEE HEALTH BENEFITS,)
Respondents.)

VLRB Case No.: 19 - 16

**VERMONT-NEA'S ANSWER TO THE CHARGE AND AMENDED
CHARGE OF AN UNFAIR LABOR PRACTICE**

INTRODUCTION

The Vermont Legislature created the Commission on Public School Employee Health Benefits ("Commission"). *See* Act 11 (2018 Special Session); *see also* 16 VSA §§ 2101-2108. That Commission is tasked with a single mission, to bargain the health care for all school employees. *See* 16 VSA § 2103 ("Duties of the Commission"). Act 11 required the parties to begin bargaining on or before April 1, 2019, and the parties met on April 1, 2019 for the first formal bargaining session wherein they exchanged initial proposals. *See* 16 VSA § 2104(a)(1).

Respondents answer the charges raised by VSBA as follows:

1. The term "demanded" is inaccurate, and is, therefore, denied. It is admitted, however, that Respondent informed the school board Commission members' representative, Joe

McNeil, that it would have alternates. Those alternates can step-in as voting members of the Commission should that become necessary. Indeed, one voting member of the school employees' Commission was denied "release" time by his employing school board in order to attend the April 1, 2019 initial bargaining session. In all other ways, the remainder is denied.

2. The term "untenable" is vague and ambiguous, and is, therefore, denied. It is admitted, however, that Respondent's position about alternates was consistent. The parties did bargain on April 1, 2019 and did exchange initial proposals. Attached hereto are Exhibits 1 & 2, which are the Employer's and Employee's initial proposals, respectively. Instead of explaining its proposal, however, the Employer spent the bulk of the allotted bargaining time arguing over who the Employees could and could not bring to the bargaining table. In all other ways, the remainder is denied.

AFFIRMATIVE DEFENSES

1. The Charge fails to state a claim upon which relief can be granted.
2. The Charge fails to state any violation of state law.

Dated in Montpelier this 9th day of April, 2019.

By: Wanda Otero-Weaver / JEF
Wanda Otero-Weaver, Esq.
Vermont-NEA
10 Wheelock Street
Montpelier, VT 05602
802.223.6375

Act 11 Management Contract Language Proposal

April 1, 2019

EXHIBIT 1

Article I. Recognition:

Sec. 101: In accordance with 16 V.S.A. Chapter 61 (Sec. H.11 of Act 11 of the 2018 Special Session of the Vermont General Assembly), the five (5) representatives of participating employees on the Commission on Public School Employee Health benefits is recognized as the exclusive bargaining representative of eligible employees for all aspects of representation within the jurisdiction created by said Chapter 61.

Article II. Definitions:

Sec. 201: The following definitions shall be applicable to this Agreement:

(a) Licensed Teachers: Employees of Vermont school districts and supervisory districts providing employment services requiring a professional teaching license from the Vt. Agency of Education.

(b) Licensed Administrators: Employees of Vermont school districts and supervisory districts (District Employees) providing employment services requiring a professional administrator's license from the Vt. Agency of Education.

© Support Staff: (full-time/year-round support staff, full-time/school year support staff, full-time/extended school year support staff)

(d) All Other District Employees' categories: (i.e. athletic director, payroll manager, bus drivers, food services, business office employees, human resources staff, IT employees, but excluding contracted extra/co-curricular employees and independent contractors.)

Article III. Plan Offerings:

Sec. 301: All participating District Employees who are eligible for coverage will be able to select one of the four plans offered by VEHI: Platinum, Gold, CDHP Gold or CDHP Silver

Article IV. Duration:

Sec. 401 This Agreement shall be in force for two (2) years commencing July 1, 2020 and expiring June 30, 2022 unless extended by mutual agreement of the Parties.

Article V. Eligible/Participating Employees: Consistent with the policies of the insurance carrier and insurance pool administrator, in order for District Employees and their eligible dependents to participate in receiving health insurance benefits under this Agreement, the following must apply:

Sec. 501: Licensed teachers who are determined by their employing district to be "full-time" employees will be eligible to secure health insurance benefits through their district according to the terms of this Agreement. Teachers who work less than full-time, but at least sixty percent (60%) of a full-time position, will be eligible to secure health insurance benefits on a pro-rata basis. For example, an eligible sixty percent 60% part-time teacher will receive 60% of the contribution the District would have made to a full-time teacher, and shall be required to pay any remainder of the premium.

Sec. 502: Licensed administrators who are determined by their employing district to be "full-time" employees will be eligible to secure health insurance benefits through the district according to the terms of this Agreement. Administrators who work less than full-time, but at least sixty percent (60%) of a full-time position, will be eligible to secure health insurance benefits on a pro-rata basis. For example, an eligible sixty percent 60% part-time administrator will receive 60% of the contribution the District would have made to a full-time administrator and shall be required to pay any remainder of the premium.

Sec. 503: "Year-round" support staff who are determined by their employing district to be "full-time" employees will be eligible to secure health insurance benefits through the district according to the terms of this Agreement. Year-round support staff, who work less than full-time, but at least sixty percent (60%) of a full-time position, will be eligible to secure health insurance benefits on a pro-rata basis. For example, an eligible sixty percent 60% part-time support employee will receive 60% of the contribution the district would have made to a full-time, year-round support staff employee, and shall be required to pay any remainder of the premium.

Sec. 504: "School year" support staff who are determined by their employing district to be "full-time" employees will be eligible to secure health insurance benefits through the district according to the terms of this Agreement. School year support staff, who work less than full-time, but at least sixty percent (60%) of a full-time position, will be eligible to secure health insurance benefits on a pro-rata basis. For example, an eligible sixty percent 60% part-time, school year support staff employee will receive 60% of the contribution the district would have made to a school year support staff employee, and shall be required to pay any remainder of the premium.

Sec. 505: "Extended school year" support staff who are determined by their employing district to be "full-time" employees will be eligible to secure health insurance benefits through the district according to the terms of this Agreement. who work less than full-time, but at least sixty percent (60%) of a full-time/extended school year

support staff position, will be eligible to secure health insurance benefits on a pro-rata basis. For example, an eligible sixty percent 60% part-time, extended school year support employee will receive 60% of the contribution the District would have made to a full-time extended school year employee, and shall be required to pay any remainder of the premium.

Sec. 506: All Other District Employee Categories: (i.e. athletic director, payroll manager, bus drivers, food services, business office employees, human resources staff, IT employees, but excluding extra/co-curricular employees and independent contractors.) All other school district employee categories and/or positions, excluding extra/co-curricular positions, who are determined by their employing district to be "full-time" employees will be eligible to secure health insurance benefits through the district according to the terms of this Agreement. Such employees who work less than full-time, but at least sixty percent (60%) of a full-time position, will be eligible to secure health insurance benefits on a pro-rata basis. For example, an eligible sixty percent 60% part-time employee will receive 60% of the contribution the district would have made to a full-time employee and shall be required to pay any remainder of the premium.

Article VI. Premium Sharing by The District and Eligible Employees:

Sec. 601: Premium sharing between the Districts and eligible employees shall be as follows:

(a) Base Plan: The dollar amount of the premium sharing contribution by the Districts shall in all instances and with all employees be tied to the premium cost of the VEHI CDHP Gold plan. Employees may apply the dollars generated from that calculation to any of the four available VEHI plans. The employee then will be required to contribute the difference between a District's contribution and the premium cost of the plan the employee selects.

(b) Premium Overpayment by the District: In the event an employee selects a plan where the total premium cost is less than that of the CDHP Gold plan, and which results in a District potential contributing dollars in excess of those needed to fund the employee's plan selection, any excess district premium contribution will be directed to an individual Health Savings Account for the employee as described in this Agreement.

Article VII. Employer/Employee Premium Sharing:

Sec. 701:

(a) Licensed Teachers: Subject to other provisions of this Agreement as to minimum eligibility and proration, for licensed teachers who fully qualify for health insurance benefit coverage, the District will contribute seventy percent (70%) toward the cost of premiums of the benefit tier selected by the

teacher, and the teacher will contribute thirty percent (30%) toward the cost of premiums for the benefit tier selected by the teacher.

(b) Licensed Administrators: Subject to other provisions of this Agreement as to eligibility and proration, for licensed administrators who fully qualify for health insurance benefit coverage, their district will contribute seventy percent (70%) toward the cost of premiums of the benefit tier selected by the administrator, and the administrator will contribute thirty percent (30%) toward the cost of premiums for the benefit tier selected by the administrator.

© Support Staff Employees: Subject to other provisions of this Agreement relating to eligibility and proration, for support staff employees who qualify for health insurance benefit coverage, their district will contribute seventy percent (70%) toward the cost of premiums of the benefit tier selected by the employee, and the employee will contribute thirty percent (30%) toward the cost of premiums for the benefit tier selected by the employee.

(d) All Other District Employee Categories: (i.e. athletic director, payroll manager, bus drivers, food services, business office employees, human resources staff, IT employees, but excluding extra/co-curricular employees and independent contractors.): Subject to other provisions of this Agreement relating to eligibility and proration, for all other district employee categories who fully qualify for health insurance benefit coverage, their district will contribute seventy percent (70%) toward the cost of premiums of the benefit tier selected by the employee, and the employee will contribute thirty percent (30%) toward the cost of premiums for the benefit tier selected by the employee.

Article VIII. Future Premium Increases:

Sec. 801: In the event that there is an increase in premium costs during any portion of the second year of this Agreement that exceeds percent in the cost of premiums for the prior year, participating employees will bear all premium cost increases in excess of such and premium sharing percentages for the Districts and employees as listed in Article ____ will be adjusted accordingly.

Article IX. Tier Access for Eligible District Employees:

Section 901: Tier access for eligible District Employees shall be as follows:

(a) Licensed Teachers: Subject to eligibility and other provisions contained in this Agreement, participating licensed teachers shall be allowed to select one the following benefit tiers: Single, Two-adult persons, Parent and Child(ren), or Family coverage.

(b) Licensed Administrators: Subject to eligibility and other provisions contained in this Agreement, participating licensed administrators shall be allowed to select one the following benefit tiers: Single, Two-adult persons, Parent and Child(ren), or Family coverage.

© Support Staff: Subject to eligibility and other provisions contained in this Agreement, an eligible support staff employee whose position is at least sixty (60%), but less than 80% of what constitutes a full-time position in the employee's job category, will be entitled to access only the single benefit tier paid for by the District on a pro-rata premium sharing basis as outlined in Article _____. This shall not prevent the employee from purchasing one of the other available benefit tiers—Two-adult persons, Parent and Child(ren), or Family coverage—at the employee's sole expense.

If the eligible support staff employee's position is 80% or greater, but less than 100% of what constitutes a full-time position in the employee's job category, the employee will be entitled to access all benefit tiers paid for by the District on a pro-rata premium sharing basis as outlined in Article _____.

Article X. Employees Under Part-time Contract in Two or More Districts/Supervisory Unions:

Sec. 1001: Premium Sharing: District Employees who have part-time contracts with multiple school district employers, shall be eligible for health insurance coverage according to this Agreement as follows: Each District will bear a proportional, premium sharing responsibility equal to the part time percentage of the employee's contract. For example, if District "A" has a 60% employment contract/relationship with the school employee, District "A" will be responsible for 60% of the total district premium sharing responsibility found in Article _____.

Sec. 1002: Plan Administration: In those instances where the District Employee is employed by multiple districts, administration of the employee's health insurance benefits will be the primary responsibility of the district with the largest contractual relationship. In the event two or more districts have identical contractual relationships with the employee, the District that first employed the employee will have responsibility of administrator of the employee's insurance benefits.

Article XI. One-Year Contracts For Licensed Teachers and Administrators:

Sec. 1101. All terms and conditions of this Agreement shall apply to eligible District Employees, as defined in Article _____, who are employed by a district for a limited duration contract lasting one (1) year.

Article XII. Health Savings Accounts:

Sec. 1201. District Contribution to HSAs: During the first year of this Agreement, for each participating District Employee who is eligible for health insurance coverage and who selects an HSA compatible health insurance plan, (CDHP Gold and CDHP Silver), the employing district will contribute in quarterly installments to the employee's individual Health Savings Account (HSA) an annual amount of money equal to

Sec. 1202. Second Year: In the second year of this Agreement, participating districts shall contribute an amount into the employee's HSA that is points less than the preceding year.

Sec. 1203. Employee Contributions to personal HSAs: Subject to IRS regulations, nothing in this Agreement shall prevent individual employees from making additional contributions to their personal HSA. (

Sec. 1204. HSA Third Party Administrator and Administrative Fees (TPA): The Employer Commissioners will select the vendor who will provide TPA services to District Employees, will make all administrative decisions related to the delivery of those services, and will pay the fees related to those services.

Sec. 1205. Cash-in-Lieu of Benefits Payments: Cash-in-Lieu payments by districts to eligible employees who choose not to secure health insurance coverage though the district is expressly prohibited.

Article XIII. Grievance Procedure:

Sec. 1301 Definition: Any claim by either the Employee or Employer Commissioners that there has been a misapplication or misinterpretation of the provisions of this Agreement or of the requirements of said Chapter 61 of 16 V.S.A. shall be regarded as a grievance hereunder.

Sec. 1302 initial Filing: The initial filing of any Grievance pursuant to this Article must be made within thirty (30) work days of the date the Party hereto filing the grievance knew or reasonably should have known of the existence of the facts giving rise to the grievance.

Sec. 1303. Step One: The initial filing shall be with the designated Chair of either the Employer or the Employee Commissioners as the case may be. Such commissioners shall meet with their counterpart Commissioners to discuss the grievance and shall either agree to resolve the same or shall deny the grievance within twenty (20) work days from the date of its initial filing. If the grievance is not successfully resolved at Step 1, it may be appealed to final and binding arbitration under Step two hereof within ten (10) workdays of the date of the Step One denial.

Sec. 1304. STEP Two: Upon referral of a grievance to Final and Binding Arbitration, the parties shall endeavor to choose an arbitrator by mutual agreement. If this effort is unsuccessful, the arbitrator shall be selected and the hearing held in accordance with the Labor Arbitration Rules of the American Arbitration Association. The Arbitrator's award shall be final and binding with the exception of appeals authorized by Vermont's Arbitration Act. The Parties' signature to this Agreement shall also signify their Acknowledgement of Arbitration as required by law. The cost of arbitration, other than attorneys' fees which will be paid separately, will be equally split between the Parties.

Article XIV. Successor Agreement:

Sec. 1401: The parties agree to meet and negotiate for a successor agreement to this Agreement not later than April 1, 2022 and to follow the mandates of said Chapter 61 then applicable.

Add Boiler-Plate provisions on controlling Vt. law; standard zipper clause; equal participation in negotiating so Agreement not interpreted against either party; declared invalidity of one section not invalidating the entire Agreement; binding on successors and assigns; use of one gender infers both;

2019 Statewide Bargaining Proposals
from Vermont-NEA & AFSCME

April 1, 2019

Vermont-NEA, Health Insurance Reform Principles on Equity, Affordability and Ability to Pay (2018)

Result in health insurance that is equitable and affordable for all school employees.

Create a system that is predictable, affordable, and based on a school employee's ability to pay.

American Federation of State, County and Municipal Workers, Statement on Health Care Reform (1993)

The Union has long advocated that health benefits be comprehensive, affordable and financed on the ability to pay

Vermont School Boards Association (2018-2019 Resolutions)

In order to ensure equity and sustainability in the health care benefits available to all school employees, the General Assembly should adopt a process for the negotiation of health care benefits at the state level by a council of school board members to apply to contracts that expire in 2019.

The Report of the Vermont Education Health Benefits Commission (2017)

The Commission agrees that equal access to health care benefits for all Vermont teachers, administrators and support staff and uniform, predictable cost sharing arrangements for those benefits are significant advantages of establishing a statewide negotiation. ...A statewide negotiation could provide all school employees with health benefits coverage under equitable cost sharing terms.

...
The Commission agrees that the use of income-sensitized premiums provides an additional mechanism for further addressing and alleviating disparities across different employee classes and/or bargaining units.

Act 11, Vermont Legislature, Special Session (2018)

In recognition of the existing disparities in health care benefits between different supervisory unions and school districts and between different categories of employees within the same supervisory unions and school districts, it is the intent of the General Assembly that the Commission on Public School Employee Health Benefits endeavor to transition school employees and school employers to more equitable health coverage statewide in a manner that is fair and practicable for all parties involved.

Table of Contents

Bargaining Team 3

Introduction 4

Article I: Implementation Date of Statewide Negotiations’ Agreement 5

Article II: Defining the Scope of Statewide Bargaining 5

Article III: Resolving Challenges with Data Collection & Analysis..... 6

Article IV: Income-Sensitized Cost-Sharing and the Future of Statewide Bargaining..... 7

Article V: General Provisions 8

Article VI: Duration of Statewide Agreement..... 8

Article VII: Eligibility for Health Benefit Coverage 9

Article VIII: Continuation of Health Benefit Coverage 10

Article IX: Premium Cost-Sharing: Employers and Employees 11

Article X: Preserving & Expanding Access to All Tiers of VEHI Benefit Plan Coverage 12

Article XI: Out-of-Pocket Cost-Sharing: Employers & Employees 14

Article XII: Pharmaceutical (Rx) Out-of-Pocket Costs 15

Article XIII: Waiver of Coverage & Cash-in-lieu (CIL) of Benefits 15

Article XIV: Transitioning to a Statewide TPA and TPA Services in the Interim..... 15

Article XV: Health Reimbursement Arrangements (HRAs)..... 16

Article XVI: Flexible Spending Accounts 16

Article XVII: Termination of Contributions to Health Savings Accounts 17

Article XVIII: Recommendations to VEHI from the Statewide Bargaining Committee 17

Article XIX: Post-Negotiations Troubleshooting and Implementation Assistance..... 18

59 ***Bargaining Team***

60

61 Will Adams

62 Mike Campbell

63 Lori Darrell

64 Bill Douglas

65 Barb Griffin

66 Jon Harris

67 Russell Leete

68 Larry O'Connor

69 Nora Skolnick

70

71

72

73

74

75

76

77

78

79

80

81

82

83

84

85

86

87

Introduction

Sustaining and Expanding Access to Affordable and Equitable Health Care Benefits

As statewide representatives of tens of thousands of unionized and non-unionized public school employees and their families, Vermont-NEA and AFSCME, consistent with the intent of Act 11, are committed to negotiating a health benefits settlement that expands full access to affordable and equitable health care for all school employees and their dependents who have been denied such access to date. We are also committed to sustaining access to affordable and equitable health benefits for school employees and their dependents who are fortunate to have it at present, and who have sacrificed wage and other benefit gains for decades to achieve and maintain these benefits.

We believe access to high-quality, affordable health care for all school employees and their dependents is absolutely essential to the recruitment and retention on high-quality teachers, educational support professionals and administrators.

Working Together in the Service of Public Education and the Common Good

Vermont-NEA and AFSCME will pursue these statewide negotiations in a spirit of collaboration and mutual respect.

This is probably the most demanding and consequential bargaining assignment any of us have ever undertaken. Unfortunately, we do not have a lot of time for research and deliberation, and the complexity of our work is great. Going forward, therefore, we must do our “homework” thoroughly and quickly, take pains to “do no harm,” and be patient with each other as we try to understand and resolve a host of issues that historically have been addressed at the local level with the benefit of locally specific and accessible data.

We must also discuss how we can readily gain access to and work systematically (and more quickly) with the data we need from school districts and other sources so that we can more effectively prepare for and conduct statewide bargaining in the years to come.

Finally, the widespread and severe health benefit problems of 2018, personal and institutional, which are still playing out in 2019, underscore how important it is to learn from past decisions and actions.

Article I: Implementation Date of Statewide Negotiations' Agreement

July 1, 2020 vs. January 1, 2021

At present, VSBA and the Unions are discussing with legislators a "technical fix" to Act 11 that would move the implementation date of the statewide bargaining settlement to January 1, 2021 (rather than July 1, 2020). It is our understanding that the leadership of the unions and VSBA are in general agreement that there are clear advantages to moving the implementation date to January 1, 2021, especially as it pertains to the administration in 2019 to health spending accounts.

However, if the date change does NOT happen via legislation as the unions hope, we propose that for the limited period of July 1, 2020 through December 31, 2020, health benefits for unionized and non-unionized personnel be maintained in accordance with the terms and conditions that had been negotiated at the local level statewide and were in effect on June 30, 2020.

NOTE: *The proposals that follow are predicated on the understanding that the implementation date of **any new health benefit terms different from those that were in effect in local school districts on June 30, 2020**, will be January 1, 2021; if that proves for whatever reason not to be true, the union reserves the right to amend the start dates and timelines in its proposals to reflect a start date of July 1, 2020, without altering the intent of its proposals.*

Article II: Defining the Scope of Statewide Bargaining

Maintaining Consistency with Act 11 and Protecting the Integrity of Local Collective Bargaining Agreements

1. The unions propose that parties agree that the scope of statewide bargaining will be limited to the following issues:
 - a) Determining eligibility for health benefit plans and tiers of coverage for school employees;
 - b) Standardizing the duration of health insurance coverage during a term of employment;
 - c) Negotiating cost-sharing amounts between employers and employees for premiums and out-of-pocket costs;
 - d) Structuring cost-sharing between employers and employees via health spending accounts;
 - e) Researching, vetting and establishing a system of third-party administration that is efficient and competent, technologically sophisticated and manageable, and accountable to employers and employees;
 - f) Developing local training resources and workshops for employees about their benefit plans, health spending accounts, and TPAs;
 - g) Assessing the value and costs of cash-in-lieu (CIL) benefits in relation to the shared pursuit of greater affordability and equity;

h) Conceptualizing and implementing ratification processes at the close of formal negotiations.

2. The unions and VSBA agree that they will take appropriate and effective measures to avoid decisions that may undermine or negate, or could be interpreted to undermine and negate, existing terms and conditions of employment that are not controlled by Act 11 and historically have been collectively bargained at the local level or provided via policy or individual employment contracts at the local level for non-unionized staff, and that shall continue to be collectively bargained locally or extended via policy or individual employment contracts locally.
3. All existing terms and conditions of employment in collective bargaining agreements, individual employment contracts or school policies – too numerous to enumerate here – that are not subjects of bargaining under Act 11, but that directly involve or implicate the provision of health benefits (for example, early retirement and severance agreements, long-term disability benefits, paid and unpaid leaves of absence, etc.), shall not be affected or altered in any way by the terms of the statewide agreement on health benefits.
4. The parties affirm that all existing terms and conditions of employment in collective bargaining agreements that are not subjects of bargaining under Act 11 shall continue to be collectively bargained at the local level between school districts and the local union representatives of their employees; or such terms and conditions that are currently set in policy or individual employment contracts on behalf of employees who are not part of recognized bargaining units shall continue to be determined by policy or individual employment contracts.
5. The statewide settlement on health benefits will not constrain or limit in any way the ability of local school districts and unions to collectively bargain over and come to agreement on new or expanded terms and conditions of employment that involve or implicate health care benefits but are not subjects of bargaining under Act 11 (for example, early retirement provisions, employee severance agreements, long-term disability benefits, paid and unpaid leaves of absence, etc.). The same will apply to new or expanded terms and conditions of employment established by or negotiated with school districts on behalf of employees who are not part of recognized bargaining units.

Article III: Resolving Challenges with Data Collection & Analysis

The unions propose that they and VSBA, with outside expertise and guidance as needed, design and develop in partnership an administratively manageable and sustainable system of statewide data collection, dissemination and analysis for public schools and school employees. This system must be ready to use before the start of the second round of statewide bargaining. Conceptual and design work will begin in the first six months of 2020, in accordance with a protocol and team-based approach to be determined by the parties.

The first-round of collective bargaining to implement a statewide health care benefit is constrained by five major factors:

1. A narrow statutory window for conducting and completing health care bargaining;
2. A small number of negotiation sessions prior to statutorily mandated impasse resolution processes;
3. Inadequate time to study and assess a very large and complicated archive of employee benefit data;
4. Great difficulty “costing out” proposals and models of cost-sharing to determine their financial impact per school district and per employee statewide; and
5. Substantial variations on the current amounts and structures of cost sharing and on eligibility requirements for enrolling in benefit plans and tiers of coverage.

These factors not only impede the bargaining efforts of the unions and VSBA, but they will prove problematic for a mediator/fact-finder or arbitrator, especially points 3-5. None of the obstacles in respect to data are of short duration, either. It will prove equally onerous, if not impossible, to prepare for and conduct bargaining effectively, expeditiously, and fairly in the future, with minimum disruption to school central offices, using current methods of data collection and analysis.

Article IV: Income-Sensitized Cost-Sharing and the Future of Statewide Bargaining

Income should never be a barrier to medical care. What employees pay for employer-based health insurance should be based on their ability to pay.

To that end, the unions are proposing as a first step in these negotiations an out-of-pocket (OOP) cost-sharing formula that is income sensitized (**see Article XI, pg. 14**).

Second, regardless of how our OOP cost-sharing proposal fares in bargaining, the unions propose that no later than February 1, 2020, Vermont-NEA, AFSCME, and VSBA undertake a rigorous project of research and data analysis with the objective of designing income-sensitized model(s) of cost-sharing for health benefits that is(are) fair and practicable for school districts and school employees.

To accomplish this:

- a) The parties will jointly determine how to structure, facilitate and fund this project and with whom to consult for analytical expertise and economic-modeling guidance;
- b) The parties will determine how income-sensitivity is to be structured and implemented for all school work classifications;
- c) A model or models of income-sensitized cost-sharing will be formally adopted by the parties at the second round of statewide bargaining;

- d) The parties will keep school boards, local unions, school employees, the legislature and administration apprised of its work and progress;
- e) The consequences – medical, financial and administrative – of the transition to high-deductible benefit plans and health spending accounts in 2018 will inform the work of the parties;
- f) The first statewide agreement shall run for a duration of four years (January 1, 2021- December 31, 2024), to accord the unions, VSBA and outside support entities adequate time to research and design an income-sensitized cost-sharing model(s) and to prepare appropriately for the transition to the chosen model(s) after formal adoption.

Article V: General Provisions

1. All terms and conditions of the statewide agreement on health benefits will be incorporated by reference into existing collective bargaining agreements.
2. All terms and conditions of the statewide agreement on health benefits will be incorporated by reference into school policies or individual employment contracts that govern health benefits for school employees not in recognized bargaining units.
3. Nothing in the statewide agreement shall be construed to deny or restrict in any way the right to health insurance coverage through an employer's health care plan that employees and their dependents are entitled to under federal COBRA rules, the federal Family Medical and Leave Act (FMLA), Vermont's Family and Medical Leave Laws, or other state and federal statutes.

Article VI: Duration of Statewide Agreement

1. The unions propose that the first, statewide bargaining agreement on health benefits be for a duration of four years: January 1, 2021 – December 31, 2024.
2. A four-year agreement will greatly facilitate a joint research project on income sensitized cost-sharing. It will also permit local school boards and local unions to receive much-needed relief from the non-stop, high-pressured bargaining that commenced after VEHI announced the transition to high-deductible health plans. It will open the door again as well to the possibility of multi-year collective bargaining agreements, something that has not been achievable for some time for many districts and local unions because of the timing of the VEHI plan transition.

Article VII: Eligibility for Health Benefit Coverage

1. Effective **January 1, 2022**, all public school employees who work a minimum of seventeen and one-half (17.5) hours weekly during the school year or calendar year shall have the right to enroll in a health benefit plan with an employer subsidy to pay for premium and out-of-pocket (OOP) costs. Employees may elect coverage for themselves, their spouses and other qualified dependents from any of the four (4) tiers (e.g., single, two-person, parent/child[ren] and family) in any of the four (4) plans (e.g., Platinum, Gold, Gold CDHP or Silver CDHP) offered by the Vermont Education Health Initiative (VEHI). Spouses of employees shall include those by marriage, domestic partnerships, or civil unions. **(See Article X, pgs. 12 – 14, for details on the unions’ transition proposal to achieve universal coverage for public school employees.)**
2. Employees will not be subject to a probationary period before being permitted access to health insurance coverage for which they are eligible.
3. Health insurance coverage for new employees or employees newly eligible for health insurance coverage will start at the earliest possible date consistent with current VEHI/BCBSVT enrollment rules.
4. Full-time status for determining the amount of employer-subsidized coverage for premium and OOP costs will be based on current FTE or hourly requirements for benefit eligibility per work classifications as stipulated for recognized bargaining units covered by existing collective bargaining agreements or as codified in individual contracts and school policies for school personnel not in recognized bargaining units.
5. Employees who work less than full time but a minimum of seventeen and one-half (17.5) hours weekly during the school year or calendar year shall be entitled to pro-rata health benefit coverage.
6. Employees who are not employed full-time, who work a minimum of seventeen and one-half (17.5) hours weekly during the school year or calendar year, and who had access to the same employer-subsidy for health benefits as full-time employees prior to the implementation of the statewide negotiated agreement, shall retain access to their employer’s health insurance subsidy for full-time employees.
7. A couple (married or living as domestic or civil union partners) working for the same employer will be eligible to enroll individually in single-tier coverage, or as a couple in two-person tier coverage, or as a couple with other dependents in family-tier coverage as applicable.
8. Employees seeking to obtain benefit coverage for domestic partners and the child[ren] of domestic partners must satisfy the following criteria:

Domestic Partners:

- The employee and the domestic partner are each other's sole domestic partner and have been in an enduring domestic relationship sharing a residence for not less than six consecutive months before enrolling in their school district's health benefit plan;
- The employee and the domestic partner are 18-years old or older;
- Neither the employee nor the domestic partner is married to anyone;
- The employee and the domestic partner are not related by blood closer than would bar marriage under Vermont law;
- The employee and the domestic partner are competent to enter into a legally binding contract;
- The employee and the domestic partner have agreed between themselves to be responsible for each other's welfare.

Child[ren] of Domestic Partner:

- The child[ren] otherwise meets the eligibility criteria for dependent child[ren] under the eligibility provisions for school health benefit coverage;
- The child[ren] can be, and is, claimed as a dependent by the employee and/or the domestic partner for federal income tax deduction purposes;
- The child[ren] resides with the employee and the domestic partner;
- The employee and the domestic partner have agreed between themselves to be jointly responsible for the child's welfare.

Article VIII: Continuation of Health Benefit Coverage

1. Employer-subsidized health insurance coverage for employees whose employment ends on June 30 will extend for two months, until August 31 of the same calendar year, **unless** school districts and local union representatives have agreed to longer alternative arrangements (e.g., via retirement incentives or severance agreements, or leaves of absences, etc.) for school employees in recognized bargaining units; or **unless** school districts have policies or contractual provisions in place with longer alternative arrangements for employees not in recognized bargaining units;

Employees whose employment ends on June 30 of any given year may terminate enrollment in their employers' subsidized health insurance coverage sooner than August 31 of the same calendar year if they notify their former employer in writing that they are electing to enroll in health coverage from an alternative source and that such coverage will become effective **prior to** August 31. Employees who decide to enroll in health insurance coverage from an alternative source **prior to** August 31 shall be entitled to remain in their former employer's subsidized health insurance coverage until benefit coverage from the alternative source goes into effect.

2. Employees whose employment ends for any reason before the close of their contracted term will retain employer-subsidized health insurance coverage for themselves and their dependents until the last day of the following month after the month their contractual service ends (for example, an employee who resigns, is laid off, or is terminated in March can elect to retain the same employer-subsidized health insurance coverage through the last day of April of the same year). This period of coverage for affected employees can be extended beyond the term stipulated above if local school districts have agreed to alternative arrangements (e.g., via retirement incentive provisions, severance agreements, etc.) with the local union representatives of their school employees or with employees outside the bargaining unit.

Article IX: Premium Cost-Sharing: Employers and Employees

1. For the duration of the first statewide bargaining agreement, each employer will contribute the same percentage of premium contributions that had been negotiated or determined locally prior to the implementation of the statewide agreement and based on the VEHI plan and tier-of-coverage decisions of employees (unionized and non-unionized) eligible for the employer's premium subsidy.

For example:

- a) If an employer was paying eighty-five (85) percent of the premium contribution for the Gold CDHP for any tier of coverage, and that amount of money could be credited at an employee's discretion toward the premium costs for a tier of coverage in another VEHI plan, for the duration of the statewide health benefits agreement, the employer will continue to pay 85 percent of the Gold CDHP's premiums and that amount of money can still be applied annually at the employee's discretion to a comparable tier of coverage in another VEHI benefit plan.
- b) If an employer was paying eighty-five (85) percent of the premium contribution for the Silver CDHP for all tiers of coverage, and that amount of money could be credited at an employee's discretion toward the premium costs for a comparable tier of coverage in any other VEHI plan, for the duration of the statewide health benefits agreement, the employer will continue to pay 85 percent of the Silver CDHP's premiums and that amount of money can still be applied annually at the employee's discretion to a comparable tier of coverage in another VEHI benefit plan.
- c) If an employer was paying different premium amounts depending on enrollment in any of the four VEHI plans, for the duration of this agreement, the employer will continue to pay the same premium contribution toward coverage in each of the VEHI benefit plans elected by its employees.

Article X: Preserving & Expanding Access to All Tiers of VEHI Benefit Plan Coverage

1. There shall be no rollbacks or diminishment in access to employer-subsidized tiers of health benefit coverage (i.e., single, two-person, parent/child[ren] and family) that public school employees and their dependents were eligible to elect prior to the implementation of the statewide negotiated agreement.
2. Employees shall be entitled to gain access, as delineated below, to additional tiers of employer-subsidized coverage for which they had not been eligible for prior to the implementation of the statewide negotiated agreement; but employees shall not lose access to any tiers of health benefit coverage for which they were previously eligible. For example:
 - a) Employees who had access to employer-subsidized single, two-person, parent/child[ren], or family coverage prior to the implementation of the statewide negotiated agreement shall retain the right to remain in or elect any of those employer-subsidized tiers of coverage effective January 1, 2021;
 - b) Employees who had access to employer-subsidized single coverage only prior to the implementation of the statewide negotiated agreement shall retain the right to remain in or elect employer-subsidized single coverage effective January 1, 2021, and, subsequently, at their discretion, may enroll in other tiers of employer-subsidized coverage in conformance with the terms below;
 - c) Employees who had access to employer-subsidized single and two-person coverage only prior to the implementation of the statewide negotiated agreement shall retain the right to remain in or elect employer-subsidized single or two-person coverage effective January 1, 2021, and, subsequently, at their discretion, may enroll in other tiers of employer-subsidized coverage in accordance with the terms below;
 - d) Employees who had access to employer-subsidized single, two-person coverage, or parent/child[ren] coverage only prior to the implementation of the statewide negotiated agreement shall retain the right to remain in or elect employer-subsidized single, two-person or parent/child[ren] coverage effective January 1, 2021, and, subsequently, at their discretion, may enroll in employer-subsidized family coverage in accordance with the terms below.
3. During the first year of this agreement (January 1 – December 31, 2021), school employees who previously did not have access to or had only limited access to employer-subsidized tiers of coverage shall, at a minimum, be guaranteed access to employer-subsidized single, two-person, and parent/child[ren] coverage in any VEHI plan.
4. Beginning the second year of the statewide agreement (January 1 – December 31, 2022), and for every year thereafter, school employees who previously did not have access to or had only limited access to employer-subsidized tiers of insurance coverage shall be guaranteed employer-subsidized access to all four tiers of coverage in any VEHI Plan.

- 444
- 445 5. Expansion of access to employer-subsidized tiers of coverage shall apply equally to all employees,
- 446 regardless of work classification and bargaining-unit eligibility.
- 447
- 448 6. School districts and local unions may negotiate locally to expedite the above timeline to provide access
- 449 sooner to additional employer-subsidized tiers of coverage for employees who previously did not have
- 450 access to or had only limited access to employer-subsidized tiers of coverage. If they elect to do so, the
- 451 cost-sharing terms for said coverage negotiated at the state level will apply in all circumstances.
- 452
- 453 7. The premium contributions of employees who become eligible for expanded tiers of employer-subsidized
- 454 coverage in accordance with the timeline and terms above (Article X, numbers 3-5) shall be determined
- 455 as follows:
- 456
- 457 a) When employees who had access to limited tiers of employer-subsidized benefit coverage *prior* to
- 458 the implementation of the statewide negotiated agreement (i.e., single-person only, or single and
- 459 two-person only coverage, etc.) become newly eligible to enroll in other employer-subsidized tiers
- 460 of coverage in any VEHI benefit plan, consistent with the terms above (Article X, numbers 3-5), they
- 461 shall pay a premium contribution per elected tier of coverage in the benefit plan of their choice that
- 462 is **EITHER** the same as they had been paying *before* becoming eligible to enroll in additional tiers of
- 463 coverage **OR** fifteen (15) percent, whichever amount is less;
- 464
- 465 b) When employees who were **not** eligible for any employer-subsidized benefit coverage in any VEHI
- 466 benefit plan *prior* to the implementation of the statewide negotiated agreement become newly
- 467 eligible to enroll in employer-subsidized tiers of coverage in any VEHI benefit plan, consistent with
- 468 the terms above (Article X, numbers 3-5), they shall pay a premium contribution per elected tier of
- 469 coverage in the benefit plan of their choice that is **EITHER** the same contribution being paid by
- 470 employees in the same general work classification (e.g., educational support staff, teachers or
- 471 administrators) who had been eligible for employer-subsidized benefit coverage prior to the
- 472 implementation of the statewide negotiated agreement **OR** the amount of premium contribution
- 473 that is being paid by **teachers** who had been eligible for employer-subsidized benefit coverage prior
- 474 to the implementation of the statewide negotiated agreement, whichever amount is less.
- 475
- 476 8. During the transition to expanded eligibility for employer-subsidized tiers of coverage, employees shall
- 477 have the option to allocate an employer's premium contribution toward their current tiers of coverage
- 478 to a more expensive or less expensive tier of coverage in any VEHI plan for which they are not yet eligible
- 479 for an employer subsidy, by paying the difference between the employer's premium contribution for the
- 480 current tier of coverage and the full premium cost for the tier of coverage elected.
- 481
- 482 9. Employees who transition to single coverage with an employer-subsidy or who transition themselves and
- 483 their dependents to benefit coverage with an employer subsidy in accordance with the terms above, will
- 484 forfeit any employer contribution to an FSA that had been paid previously to cover medical and
- 485 pharmaceutical costs for the employee alone or for the employee's dependents before the employee

became eligible for single or dependent benefit plan coverage with an employer subsidy. However, the employee may continue to receive an employer contribution to an FSA that had been negotiated or determined locally prior to the employee transitioning to an employer-subsidized health benefit, provided the FSA contribution is allocated exclusively for dental, vision and/or dependent care expenses.

Article XI: Out-of-Pocket Cost-Sharing: Employers & Employees

Medical Out-of-Pocket Costs – Deductibles, Co-Insurance and Co-Payments

1. For employees and their dependents enrolled in the **VEHI Gold CDHP**, employers will pay medical out-of-pocket (OOP) costs with first-dollar contributions equal to the dollar equivalents of the percentages below based on an employee's fiscal-year income:
 - a) The employer shall pay **ninety-five (95) percent** of the maximum OOP costs for the VEHI Gold CDHP for an employee who earns **\$45,000 or less**. The employee shall pay **five (5) percent** of the maximum OOP costs.
 - b) The employer shall pay **ninety (90) percent** of the maximum OOP costs for the VEHI Gold CDHP for an employee who earns **\$45,001 to 75,000**. The employee shall pay **ten (10) percent** of the maximum OOP costs;
 - c) The employer shall pay **eighty-five (85) percent** of the maximum OOP costs for the VEHI Gold CDHP for an employee who earns **\$75,001 or more**. The employee shall pay **fifteen (15) percent** of the maximum OOP costs.
2. For employees and their dependents enrolled in the **VEHI Platinum or Gold Plans (non-CDHP options)**, employers will pay medical OOP costs with first-dollar contributions equal to the dollar equivalents of the same percentages above based on an employee's fiscal-year income, but those contributions in total will be based on the maximum OOP costs of the **VEHI Gold CDHP**.
3. For employees and their dependents enrolled in the **VEHI Silver CDHP**, employers will pay medical OOP costs with first-dollar contributions equal to the dollar equivalents of the same percentages above based on an employee's fiscal-year income, but those contributions in total will be based on the maximum OOP costs of the **VEHI Gold CDHP**.
4. Employees are responsible for the payment of out-of-pocket costs for medical services attributable to deductibles, co-payments, and coinsurance charges after the employer's first-dollar portion has been allocated in full.

527 ***Article XII: Pharmaceutical (Rx) Out-of-Pocket Costs***

528
529 Employers will cover one hundred (100) percent of the maximum pharmaceutical (Rx) OOP costs of the
530 employee and the employee's dependents enrolled in any of VEHI's four benefit plans. Debit cards will be
531 provided to employees to facilitate pharmaceutical charges.
532
533

534 ***Article XIII: Waiver of Coverage & Cash-in-lieu (CIL) of Benefits***

- 535
536 1. Cash-in-lieu payment provisions currently permitted and administered in accordance with local collective
537 bargaining agreements, school policies or individual employment contracts shall remain in force. They shall
538 not be affected or altered by the terms of the statewide negotiated agreement on health benefits.
539
540 2. Current CIL waiver-of-coverage documentation provisions and payment protocols in local school districts
541 shall also remain in force. They shall not be affected or altered by the terms of the statewide negotiated
542 agreement on health benefits.
543
544

545 ***Article XIV: Transitioning to a Statewide TPA and TPA Services in the Interim***

- 546
547 1. The parties will transition to a statewide system of administering HRAs and FSAs effective January 1,
548 2021.
549
550 2. A Third Party Administrator (TPA) with statewide duties will be jointly vetted and selected by the unions
551 and VSBA, with outside assistance if needed.
552
553 3. Prior to the transition to a statewide TPA contract, HRAs, FSAs and HSAs will be administered in
554 accordance with the TPA contracts in effect for the first half of FY21 (July 1, 2020 – December 31, 2020).
555
556 4. Locally negotiated or determined provisions that governed the payment of administrative fees for TPAs
557 prior to the implementation of the statewide negotiated agreement, both for school employees in
558 recognized bargaining units and those not in recognized bargaining units, shall also remain in force until
559 the transition on January 1, 2021, to a statewide system of TPA administration.
560
561 5. Employers shall pay the administrative expenses charged by the TPA contracted to serve all school
562 districts statewide effective January 1, 2021.
563
564 6. The TPA chosen for state-level responsibilities must be able to competently structure HRAs to make auto-
565 payments to doctors and other health care providers, hospitals, clinics, and other centers of medical care.

Autopayment to providers will be the default payment method unless requested otherwise by employees.

7. The TPA chosen must be able to provide debit cards to facilitate payments when auto-payment is not an option (for example, at pharmacies). Debit cards must be provided to employees prior to January 1st of each year of this agreement.

Article XV: Health Reimbursement Arrangements (HRAs)

1. Employers will establish and maintain Health Reimbursement Arrangements (HRA) for all employees who elect benefit coverage for themselves and their dependents under any VEHI plan.
2. HRA funds will be used to pay for qualified medical and prescription expenses and track towards the annual deductible, co-payments or coinsurance required of the plan selected.
3. The length of run-out for HRA funds shall be one-hundred and eighty (180) days.
4. New employees hired at any point in the calendar year will be allotted their entire HRA amount.

Article XVI: Flexible Spending Accounts

1. Employers shall offer a Flexible Spending Account (FSA), in accordance with Section 125 of the Internal Revenue Code, to employees who elect to allocate funds to pay for qualified medical, pharmaceutical, dental and vision expenses not paid for by their insurance benefits.
2. Employers shall also offer employees access to a Dependent Care Reimbursement Account (DCRA), in accordance with Section 125 of the Internal Revenue Code, to cover qualified dependent care expenses.
3. All employees shall be eligible to avail themselves of their employer's FSA or DCRA, irrespective of hours of employment or enrollment in their employer's health plan.
4. Unused FSA funds shall be permitted to "carryover" at the end of a plan year to the maximum amount permitted under IRS regulations.
5. Once the parties move to a single, statewide TPA system, the FSA Plan year shall be a calendar year, with the open enrollment period set in January. An annual election period shall be held no later than the month of November or immediately thereafter.

6. The period to elect an FSA or DCRA for new employees shall run consistent with the terms of a school district's Section 125 Plan Document.
7. During each election period, eligible employees shall make a written election to decline or to participate in the FSA program. Employees who elect not to participate when first eligible will be prohibited from participating until the next annual election period.
8. During an election period, employees who wish to participate shall designate the portion of their calendar-year salary that they wish to have redirected to cover qualified medical, dental, vision and dependent care expenses, up to the maximum per plan year allowable under federal law. Such amount shall serve to reduce the employee's salary on a pro-rata basis each month consistent with a school district's established deduction practices.
9. In accordance with IRS regulations, any funds remaining in an employee's FSA ninety (90) days after the close of the plan year shall be forfeited and shall be used by the employer to offset the administrative costs of the program. Annually, during the first week of December, employers shall send notification of potential forfeiture to any employee with funds remaining in their FSA. The local union shall have the right to review annually district records pertaining to any savings and expenses related to the FSA program.
10. Employee premium payments will be made by payroll deduction on a pre-tax basis through a Section 125 Plan administered by the employer.

Article XVII: Termination of Contributions to Health Savings Accounts

1. Effective January 1, 2021, school districts shall cease making all contributions to employees' Health Savings Accounts (HSAs).
2. In conformance with IRS regulations, employees with HSAs shall retain access to and be permitted to issue monetary disbursements to themselves for qualified expenses from funds in established HSAs.

Article XVIII: Recommendations to VEHI from the Statewide Bargaining Committee

The unions propose that the parties act on the authority Act 11 confers on the Statewide Bargaining Commission to make recommendations to VEHI about its benefit plans and operations. Union members and their families, and even non-unionized employees, have shared a great deal with us about VEHI and its new benefit plans over the past 15 months. The unions will summarize later for the Commission what we have learned from our members about VEHI benefit design and other concerns that deserve to be brought to your attention and to VEHI's. For now, here are four starter topics on our list:

1. The unions propose that the commission urge VEHI to allow school personnel who are contracted by more than one school district a total of a minimum of 17.5 hours per week, but less than that amount of hours for any one school district, to enroll in a VEHI health benefit plan with employer premium and OOP cost subsidies shared between the employing schools. For many years, this was VEHI's policy.
2. The very high cost of medications for members in the Gold CDHP and Silver CDHP are causing hardships statewide, medical and financial. VEHI is aware of this. A significant number of school employees are finding it difficult to afford their first-dollar contributions or the full price of prescriptions at the point of service. We propose that the commission recommend to VEHI that it research and implement alternative methods of cost-sharing in future benefit designs for prescription medications that would reduce the number and severity of hardships resulting from most prescriptions in CDHP benefit options being subject to a high deductible.
3. Conversely, we propose that the commission commend VEHI for waiving cost-sharing on classes of "wellness drugs" that are prescribed to treat common and expensive chronic conditions like diabetes, asthma and high cholesterol in the Gold CDHP and Silver CDHP. This makes a lot of sense for both medical and cost reasons and, further, we propose that the commission recommend to VEHI that it both retain and expand this program for Rx services to benefit even more individuals with chronic conditions.
4. Given the large concentration of most school employees in just one of the four VEHI benefit plans – the Gold CDHP (90 percent enrollment) – we propose that the commission recommend to VEHI that it consider offering one comprehensive and affordable benefit option for active employees, rather than four. This would streamline educational, enrollment and general administrative responsibilities by employers, TPAs, VEHI and BCBSVT. It could also potentially make it easier to implement benefit design changes and innovations in the future that expand access to affordable and equitable health care while helping to control costs.

Article XIX: Post-Negotiations Troubleshooting and Implementation Assistance

The unions believe it would be beneficial for the Statewide Commission to consider if there is a need for the unions and VSBA to create an implementation assistance system or some other similar mechanism at the state level to help local unions and school districts understand the first statewide agreement fully and to assist them with the resolution of thorny benefit issues that we did not foresee or that arose as unintended consequences of our actions, and that do or may have statewide implications.

Again, all of us are on new ground operating under a very tight timeline with a lot of variables. We should give some thought about the kind of implementation assistance school districts and local unions might need as they transition to a state-bargained health care benefit for all public school employees and their dependents, and if there is a role for the commission to play in this regard.